

Is the Labor Code ready for a hybrid work model?

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Since the onset of the corona crisis, legal regulation of remote working has drawn attention of employers more than ever before. The onsite working settings changed to remote from one day to another. Lawmakers responded immediately by new Labor Code provisions in April 2020 and by working on an amendment to the Labor Code which is planned to come into effect in March 2021.

According to Eurofound, in early 2020 only ca. 11.7% of employees in Slovakia regularly or occasionally worked from home. Estimates suggest that in June 2020, this number increased to more than 30%. COVID-19 pandemic certainly accelerated the trend towards remote working, particularly in knowledge-intensive businesses. Home office is no longer a benefit. It became a daily routine and sometimes a way to reduce costs. Is it sustainable?

Under standard circumstances, the employer cannot impose on the employee an obligation to work from home without appropriate agreement in the employment contract. Temporary measures introduced as a response to the pandemic currently allow employers to order home-working, and employees to request it, if the agreed type of work allows to work remotely. However, when the pandemic retreats, the employers will have to allow employees to return to their offices.

Work at Home, Telework vs. Home Office

The Slovak Labor Code specifically regulates the so-called "Work at Home" and "Telework" as special working place arrangements with agreed place of work outside the employer's premises. It can be either the employee's home or another place. It must be agreed in the employment contract. The difference between the two is in the use of equipment – teleworking employees work with information technologies. Work at Home and Telework enjoy a special legal regime, in particular as regards work-time scheduling

and payments of wage/ salary compensation (e.g. for overtime work, night work etc.). The term of "home office" is not recognized by a legal definition.

Prior to the COVID-19 pandemic, rules regulating home office were usually settled in employer's internal regulations on benefits and its use was very limited. Many employers wish to continue with remote working or at least with hybrid remote/onsite working model also after the expiry of interim COVID-19 measures. Many are planning reductions in their office space and are renegotiating leases. These activities are not always aligned with the latest employment law documentation. There is an important question to be answered: does the Labor Code allow remote working model (at least partially) without the consent of the concerned employee after pandemic measures expire? This is not possible by a unilateral order of employer. The employer must reach an agreement with the employee on remote working and evidence it in the employment contract (or its amendment).

To do's for remote working model

Minimum presence at the workplace: The Labor Code does not stipulate any requirement on the minimum presence of the employee at the employer's premises. However, it stipulates the obligation of the employer to adopt rules to prevent isolation of its remotely working employees and allow them to meet other employees.

Discrimination. Remotely working employees cannot

be discriminated and shall be treated equally.

Data protection. Remote working is correlated with increased risk of cyberattacks, leakage of data and fraud of employees. Data protection authorities in certain EU countries already questioned the security of data transfers when using video-calling software operated by service providers outside the EU. Employers should adopt technical measures ensuring data protection and update their internal policies.

Health and safety. Employers are responsible for health and safety of their employees regardless of their place of work. Technical equipment provided by employers must fulfill all mandatory requirements.

Inspection of the employee's workplace. The labor inspectorate can perform inspection in all premises where domestic employees perform the agreed work. At the same time, the right to privacy is guaranteed by law. Inspection in the employee's home might therefore be problematic if the employee does not grant his/her consent.

Meals. The obligation to provide for meals or meal vouchers for employees applies irrespective of place of work.

Employees working from home abroad. Employers with registered seat in Slovakia having employees living and performing work from abroad shall consider tax aspects such as risk of creation of permanent establishment as well as assess obligation to pay income

tax abroad and payment of contributions to social insurance schemes.

Reimbursement of costs. Employees can use their own equipment for performance of their tasks only with the consent of the employer. Many practical questions arise on the manner and extent of reimbursement of employees' costs (e.g. for internet, electricity) related to remote working.

Amendment to the Labor Code with proposed effectiveness as of March 1, 2021

A bill of amendments to the Labor Code provides more detailed legal framework for these issues. Home at Work and Telework can be combined with work in the employer's premises. The amendment introduces a revolutionary "Right to Disconnect" rule. This means that employees working remotely will have a right to reject working or fulfilling working instructions during certain parts of the day or week. Employers and employees will welcome the fact that the reimbursements of employee's increased costs related to Work at Home will not be subject to income tax.

Remote working brings benefits to both employees and employers. It is expected that remote working brings cost reductions in real estate and resources usage by 20%. There is also a welcomed ecological aspect connected to reduced commuting. In the new reality, we can expect hybrid models combining remote and onsite work rather than completely remote settings. Mental health, new collaboration tools and working routines and creating virtual social intimacy represent new challenges for employers implementing work-from-anywhere models. The employers should therefore start reflecting the changed conditions in their internal regulations and policies. The awaited amendment to the Labor Code will provide more guidance on remote working arrangements.